

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE CHEF'N CORPORATION,

Plaintiff,

v.
PROGRESSIVE INTERNATIONAL
CORPORATION,

Defendant.

CASE NO. C14-68 RAJ

ORDER

This matter comes before the court on defendant Progressive International Corporation's Rule 12(b)(6) motion to dismiss and Rule 12(f) motion to strike. Dkt. # 11.

When considering a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), "the court is to take all well-pleaded factual allegations as true and to draw all reasonable inferences therefrom in favor of the plaintiff." *Wyler Summit P'ship v. Turner Broadcasting Sys., Inc.*, 135 F.3d 658, 663 (9th Cir. 1998). However, the complaint must indicate more than mere speculation of a right to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "[F]or a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from

1 that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.”
 2 *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). “Threadbare recitals of
 3 the elements of a cause of action, supported by mere conclusory statements, do not
 4 suffice. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009). Additionally, the
 5 court is not required to accept as true conclusory allegations that are contradicted by
 6 documents referred to in the complaint. *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293,
 7 1295 (9th Cir. 1998). Dismissal can be based on the lack of a cognizable legal theory or
 8 the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*
 9 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). If the court dismisses the
 10 complaint or portions thereof, it must consider whether to grant leave to amend. *Lopez v.*
 11 *Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

12 Federal Rule of Civil Procedure 12(f) allows for a court to “strike from a pleading
 13 ... any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. Proc.
 14 12(f). The function of a 12(f) motion to strike is to avoid the expenditure of time and
 15 money that must arise from litigating spurious issues by dispensing with those issues
 16 prior to trial. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev’d on*
 17 *other grounds*, 510 U.S. 517 (1994). Immaterial matter is that which has no essential or
 18 important relationship to the claim for relief or the defenses being pleaded, and
 19 impertinent matter consists of statements that do not pertain, and are not necessary, to the
 20 issues in question. *Id.* Motions to strike are generally disfavored, and should be denied
 21 unless the matter has no logical connection to the controversy at issue and may prejudice
 22 one or more parties. *Johnson v. U.S. Bancorp*, Case No. C11-2010RAJ, 2012 WL
 23 6615507, *7 (W.D. Wash. Dec. 18, 2012). In deciding a motion to strike, the court must
 24 view the pleading in the light most favorable to the pleading party. *Id.*

25 With respect to the motion to dismiss, defendant moves the court for an order
 26 dismissing plaintiff’s claim for willful infringement. *Id.* at 3. The Federal Circuit has
 27 held that “proof of willful infringement permitting enhanced damages requires at least a

1 showing of objective recklessness.” *In re Seagate Tech., LLC*, 497 F.3d 1360, 1371 (Fed.
 2 Cir. 2007). “[T]o establish willful infringement, a patentee must show by clear and
 3 convincing evidence that the infringer acted despite an objectively high likelihood that its
 4 actions constituted infringement of a valid patent.” *Id.* “If this threshold objective
 5 standard is satisfied, the patentee must also demonstrate that this objectively-defined risk
 6 (determined by the record developed in the infringement proceeding) was either known
 7 or so obvious that it should have been known to the accused infringer.” *Id.*

8 The parties appear to agree that there is a lack of complete uniformity in district
 9 court authority addressing a willful infringement claim in light of *Twombly* and *Iqbal*.¹
 10 This District has taken the majority approach that a patentee need not allege specific facts
 11 establishing objective recklessness. *Medtrica Solutions, LTD v. Cygnus Med., LLC*, Case
 12 No. C12-538RSL, 2012 WL 5726799, *1 (W.D. Wash. Nov. 15, 2012). Rather,
 13 allegations that a defendant had notice of the patent and continued to make and sell the
 14 infringing product are sufficient to plausibly allege willful infringement. *See id.* This
 15 court agrees, and declines defendant’s invitation to hold otherwise.

16 Here, plaintiff alleges that defendant had actual knowledge of the ‘189 patent at
 17 least as of March 2012 when plaintiff sent a cease and desist letter demanding that
 18 defendant not bring a product that infringed the ‘189 patent to the market. Dkt. # 1 ¶¶ 8-
 19 9, 18. In March 2013, defendant sent a cease and desist letter regarding the redesigned
 20 product that plaintiff alleges continued to infringe the ‘189 patent. *Id.* ¶ 11. In June 2013,
 21 plaintiff sent another letter to defendant seeking confirmation that defendant would not
 22 bring to market the allegedly infringing product. *Id.* ¶ 12. Plaintiff alleges that despite
 23 having notice of infringement, defendant began marketing the infringing product with
 24 online retailers as early as July 2013 and continues to do so today. *Id.* ¶ 13.

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 26 ¹ *Seagate* addressed the requirements for a patentee to prove a claim for willfulness, and
 27 not the requirements for a patentee to plead such a claim.

1 The court finds that these allegations plausibly allege a claim for willful
 2 infringement.²

3 With respect the Rule 12(f) motion, defendant seeks an order striking allegations
 4 relating to Progressive “copying” other Chef’n products because allegations referring to
 5 other products are immaterial and impertinent to plaintiff’s claim.³ Dkt. # 11 at 7-9.
 6 Specifically, defendant requests that the court strike: (1) “pattern of copying and
 7 imitation” and “stream of nearly identical products” (Dkt. # 1 ¶ 7); (2) Exhibit 1 to the
 8 complaint, which purports to show Chef’n products and comparative Progressive
 9 products; and (3) “pattern of imitation regarding patented Chef’n products” (*id.* ¶ 18).
 10 Defendant argues that these allegations are impertinent and immaterial because there is
 11 no accompanying allegation or claim that the copying of these other products was
 12 wrongful. Dkt. # 11 at 8. However, immaterial matter is that which has no essential or
 13 important relationship to the claim for relief or the defenses being pleaded, and
 14 impertinent matter consists of statements that do not pertain, and are not necessary, to the
 15 issues in question. At this stage of the proceeding, the court cannot conclude as a matter
 16 of law from the allegations, when viewed in the light most favorable to plaintiff, that
 17 these allegations “copying” other products have no essential or important relationship to,
 18 or do not pertain and are not necessary to, plaintiff’s claim for infringement of the ‘189
 19 patent. Arguments regarding what may be admissible to a fact-finder are premature, and
 20 defendant will have ample opportunity to move the court to exclude inadmissible
 21 evidence and to narrow the issues through summary judgment at the appropriate time.

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23 ² This conclusion is not altered by additional allegations in the complaint and documents
 24 attached to the complaint, as argued by defendant. Dkt. # 11 at 4-6. The court understands that
 25 the parties have different views of whether the defendant’s product infringes the ‘189 patent.
 26 However, at this stage of the proceedings, plaintiffs have plausibly alleged a claim for willful
 27 infringement.

26 ³ Defendant complains that Chef’n has omitted various facts. Dkt. # 11 at 7. Defendant
 27 makes no request with respect to these alleged omitted facts, and the court has disregarded this
 argument.

1 For all the foregoing reasons, the court DENIES defendant's motion. Dkt. # 11.
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2 Dated this 19th day of May, 2014.

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The Honorable Richard A. Jones
United States District Judge